

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0061
Sales and Use Tax
For the Years 1998-1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax-Utilities

Authority: IC 6-8.1-5-1, IC 6-8.1-5-4, IC 6-2.5-2-1, IC 6-2.5-3-2 (a), IC 6-2.5- 5-5.1.

The taxpayer requests a credit for sales taxes paid on utilities.

II. Sales and Use Tax-Imposition of Use Tax

Authority: IC 6-2.5-3-2(a).

The taxpayer protests the imposition of use tax on several items.

STATEMENT OF FACTS

The taxpayer is a roofing contractor. The Indiana Department of Revenue, hereinafter referred to as the "department," audited the taxpayer and assessed additional sales and use tax, interest, and penalty. The taxpayer protested a portion of this assessment and requested a credit for a portion of the sales taxes paid on utilities. The department requested several items of documentation from the taxpayer. The taxpayer did not provide the requested documentation. A hearing was scheduled and the taxpayer's representative was notified. No one appeared on behalf of the taxpayer. This Letter of Findings is based upon the contents of the file.

I. Sales and Use Tax-Utilities

DISCUSSION

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1. Taxpayers are required to keep and produce at the department's request any books and records necessary for the department to determine the taxpayer's correct tax liability. IC 6-8.1-5-4.

Indiana imposes a sales tax on the transfer of property in a retail transaction. IC 6-2.5-2-1. Complementary to the sales tax, Indiana imposes an excise tax on tangible personal property stored, used, or consumed in Indiana when no sales tax was paid at the time of purchase. IC 6-

2.5-3-2 (a). Purchases of electricity in Indiana are subject to the sales/use tax unless they are “consumed in the direct production of other tangible personal property in his business of manufacturing” IC 6-2.5-5-5.1. During the audit period, the taxpayer paid sales tax on its purchases of electricity. The taxpayer requested a credit for sales taxes paid on the electricity that was consumed in its direct production process. However, the taxpayer never presented the department with any documentation to substantiate its request for credit. The taxpayer did not sustain its burden of proving that the department’s refusal to grant a credit was incorrect.

FINDING

The taxpayer’s protest is denied.

II. Sales and Use Tax-Imposition of Use Tax

DISCUSSION

Pursuant to IC 6-2.5-3-2(a), the department assessed use tax on several items of tangible personal property which the taxpayer purchased and used. These items included additional capital assets, a hyster, small tools, supplies for a contract job, copper coil, crane rentals, and paint. The taxpayer was asked to submit specific documentation for each item that would prove that use tax was not due on the item. The taxpayer failed to submit any of this documentation. Therefore, the taxpayer did not sustain its burden of proving that the use tax was improperly imposed on the protested items.

FINDING

The taxpayer’s protest is denied.